If one is asked to say that a trust is extinguished by implication, nothing less than necessary implication will suffice, and that implication is in no way necessary here.

Counsel for the appellants drew our attention to a number of minor defects and errors in the 1930 proceedings. None of them is individually of great importance, but together they do tend to indicate that the matter did not receive scrupulously careful attention. The order of 12th December, 1930, was clearly a settlement of private differences between a number of individuals. There is nothing to indicate that it was anything more.

To summarize, there was no reason in 1930 why the trusts of the Grange should be extinguished, but good reason why they should not. Since no benefit could accrue to the unborn infants, their extinguishment would have been contrary to law. Even if otherwise lawful, it would still have been unlawful if the unborn infants were not properly represented; they were not, in the circumstances, so represented by the trustees, or by anybody else. If the order had the effect attributed to it by Jobling, J., almost everything possible was wrong with it. If the trusts of the Grange were overlooked, they cannot have been extinguished, since such extinguishment can only be effected by a considered and deliberate act of the Court. It seems almost certain that they were overlooked, as otherwise there would have been grave objections to the order made. There is nothing, however, in the order which is necessarily repugnant to the continued existence of the trusts, and, in the absence of anything necessarily repugnant, I refuse to accept that the trusts were extinguished by implication.

I would allow this appeal and substitute for the fourth paragraph of the declarations in the order of the 8th May, 1950, a declaration that the Grange is still subject to the trusts created by the will of Lee Chu Neoh deceased and that those trusts affect both Tan Peng Neoh and the persons entitled to the equity of redemption. I would substitute for the provisions for disposal of the proceeds of any sale of the Grange contained in the same order an order that such proceeds be paid into Court to abide further order of the Court. If such a sale takes place, it will presumably be necessary for those interested in the legal estate and the equity of redemption of the Grange to formulate a scheme for the distribution of the proceeds of sale in such manner as will carry out *cy-près* the wishes of the testatrix; but that does not arise now. It may be necessary that an order should be made for payment by certain persons of $52,000 or some other sum to Tan Peng Neoh; that also does not arise now. There will be liberty to restore Originating Summons No. 35 of 1949 to the list for further consideration, and, as a precautionary measure, I think there should be liberty to all parties to apply generally therein.

The costs of this appeal of the Senior Assistant Registrar, as between solicitor and client, must be paid in priority to all other claims out of any proceeds of sale of the Grange or raised by mortgage or charge thereon. The party and party costs of the appellants of this appeal must be paid by the respondent Tan Peng Neoh. They will have recourse for their solicitor and client costs to the estate of Wee Theang Siew. The remaining parties to the appeal will bear their own costs thereof, and Wee Poh Neoh will have recourse to the estate of Wee Gim Neoh for any amount by which her costs have been increased by representing that estate. The deposit of $500 will be paid out to the appellants' solicitors.

The order of Jobling, J. as to the costs of the proceedings in the Court below will be set aside and there will be an order that such costs be reserved to the Judge on further consideration of Originating Summons No. 35 of 1949. He will no doubt have regard to the breaches of duty on the part of the trustees in 1930 which ultimately gave rise to these proceedings, and to the costs thrown away by reason of the improper contention of certain parties that the trusts relating to the Grange were no longer subsisting.

I think it may be desirable to add that this Court expresses no opinion on the question whether the title to the Grange is such as could be forced upon a purchaser. That matter among others may fall to be considered at a later date.

Order accordingly.

WOO CHEE MENG & ORS. v. THE COLLECTOR OF LAND REVENUE, LOWER PERAK.

[Court of Appeal (Pretheroe, Ag. C.J., Russell and Hill, JJ.) September 13, 1950]

[F.M. — Civil Appeal No. 20 of 1950]

Land Acquisition Enactment, ss. 9(iv), 10(i) and 31(ii) — Failure of owner to make claim under s. 9 of the Land Acquisition Enactment.

This was an appeal from the decision of the learned Judge on a matter referred for determination by the Collector of Land Revenue, Lower Perak. A declaration for the acquisition of the land in question had been published and the Collector had served a notice on the registered proprietors of the land as required under

section 9(iv) of the Land Acquisition Enactment and also a requisition under section 10(i) of the Enactment. The proprietors made no reply to the requisition. The Collector held an enquiry and this was attended by one of the registered proprietors who also represented the other two proprietors. The Collector offered $20,000/- as compensation and the written offer was sent to the proprietors. The proprietors considered the offer inadequate and required the Collector to refer the matter for determination by the High Court. The learned Judge held that the applicants had omitted without sufficient reason to make a claim under section 9 of the Land Acquisition Enactment, and therefore the Court could not award any sum exceeding that awarded by the Collector. The learned Judge ordered that each party do bear his own costs. The applicants appealed.

Held, (1) that there was in this case no wrongful exercise of discretion by the learned Judge and there was no reason for the Court to interfere; (2) that the learned Judge was wrong in ordering that each party bear his own costs and should have awarded costs to the Collector.

Cases referred to :—

(1) *Stevens v. Weekes* (1936) 2 K.B. 215.

(2) *Maxwell v. Keun* (1928) 1 K.B. 215.

(3) *Evans v. Bartlam* (1937) A.C. 473.

(4) *Ossenton & Co. v. Johnson* (1941) 2 All E.R. 245.

(5) *The Secretary of State for India in Council v. Bishan Dat* I.L.R. 33 All. 377.

CIVIL APPEAL.

E. D. Shearn (*Yeoh Cheang Lee* with him) for the appellants.

E. N. Griffith-Jones (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Pretheroe, Ag. C.J. : — By a declaration published in the *Gazette* on the 27th October, 1949, the State Secretary, Perak, intimated that certain land in the mukim Durian Sebatang was required for the purpose of constructing a marine dockyard. On the 3rd of November, 1949, the Mentri Besar of the State instructed the Collector of Land Revenue (hereinafter referred to as the Collector), under section 7 of the Land Acquisition Enactment (hereinafter referred to as the Enactment), to acquire the land. On the 7th November, 1949, the Collector served on the registered proprietors of the said land the notice required by section 9(iv) of the Enactment and also a requisition under section 10(i) of the Enactment. The proprietors made no reply to the requisition and apparently the Collector took no steps to compel a reply but proceeded with the acquisition. The Collector held the enquiry required by section 11 of the Enactment on the 28th November, 1949, and it was attended by one of the registered proprietors who also represented the other two proprietors. From this point certain of the facts are disputed, but it is agreed that the Collector offered $20,000 as compensation and the written offer of this amount was sent to the registered proprietors on the same day. The proprietors considered the offer inadequate, and on the 7th January, 1950, required the Collector to refer the matter for determination by the High Court.

The reference came before the High Court at Ipoh on the 25th May, 1950, and the evidence of one of the proprietors and a number of his witnesses was recorded. At the conclusion of this evidence Mr. Griffith-Jones, Federal Counsel, intimated to the Court that as the applicant had refused, or omitted, to make a claim under section 9 of the Enactment the amount to be awarded by the Court could not exceed the amount awarded by the Collector by virtue of section 31(ii) of the Enactment. That sub-section reads as follows :—

"Where the applicant has refused to make such claim or has omitted without sufficient reason, to be allowed by the Judge, to make such claim, the amount awarded by the Court may be less than and shall in no case exceed the amount awarded by the Collector."

After hearing Counsel on this point the learned Judge adjourned for the luncheon interval. After that interval he delivered an oral decision, which was recorded by a stenographer, holding that the applicant had omitted without sufficient reason to make a claim under section 9. He then awarded the proprietors the amount awarded by the Collector, *i.e.* $20,000.

The applicants then appealed to this Court against the award of the learned Judge. The appeal came up for hearing on 25th July, 1950, and Mr. Shearn and Mr. Cheang Lee appeared for the appellants, and Mr. Griffith-Jones for the respondent.

Mr. Shearn's main submission was that the appellants had been awarded no compensation in respect of the dry dock which was situate on the land acquired and that they were deterred from pressing their claim for such compensation because the Collector is alleged to have informed the second appellant that no compensation would be paid in respect of the dry dock. The evidence on this point is as follows :—

"I went before the Collector about 10 a.m. There were only the Collector and myself present. He asked me if I represented the owners of the land. I said I did. He told me the Government wanted to acquire the land. I was offered $8,000/- for the houses on the land and $12,000/- for the land. I said I was satisfied but I asked that I should be paid for the dock. The Collector said I could not get compensation for the dock. I said I would appeal if I was not compensated for the dock. I was not asked any other questions."

At a later stage this appellant deposed that he asked $34,000 for the dry dock. But all this happened at the enquiry when it was already too late for the

appellants to furnish the statement required by subsection (iv) of section 9 of the Enactment. In developing his argument Mr. Shearn stated that, as no evidence was given on behalf of the respondent, the evidence for the appellants stood uncontradicted and unchallenged. I shall return to this submission at a later stage. Mr. Shearn supported his submission by pointing out that the written offer of compensation dated the 28th of November, 1949, referred to land and five houses, but no mention was made of the dry dock. In his evidence regarding his appearance before the Collector, the second appellant deposed that he informed the Collector that he was satisfied with the offer of $8,000 for the houses and $12,000 for the land, but asked that he "should be paid for the dock. The Collector said I could not get compensation for the dock". Mr. Shearn next referred to the letter written by the solicitors for the appellants to the Collector on the 7th January, 1950, in which they asserted that "no consideration whatsoever was given for the dry dock". In the very brief record of enquiry conducted by the Collector the award is stated to be :—

"$12,000 for the land;
$8,000/- for the five houses thereon",

and again there is no mention of the dry dock. Mr. Shearn also pointed out that the first mention by the Collector of the dry dock (other than his alleged statement that no compensation would be paid for the said dock) is contained in the statement made by the Collector to the Court under section 23 of the Enactment and dated the 14th April, 1950. This was more than four months after the enquiry and was prepared after the Collector had been required to refer the matter to the High Court. Finally, Mr. Shearn referred to certain items of evidence which appear to indicate that the dry dock was a valuable asset. A contractor deposed that to construct a new dock similar to that under reference would cost $34,000 and the present dock could be repaired, in his opinion, at a cost of about $5,000. The evidence of this witness is not very clear, but it is obvious that the value of the dock is not represented by the difference between the above figures, as such a computation would ignore the fact that most of the materials of which the dock is constructed are about twenty years old. These figures, however, indicate that, in the opinion of at least one contractor, the dock has some value, in spite of the cross-examination regarding its derelict state. On this evidence Mr. Shearn submitted that he had established firstly, that no compensation had been awarded in respect of the dry dock; secondly, that the appellants were deterred from pressing their just claim for such compensation because of the conduct of the Collector; and thirdly, that the value of the dock was substantial.

Next, Mr. Shearn considered the legal position when an appellate tribunal is asked to reverse an order of a lower Court made in the exercise of its discretion. He contended that the suggestion that an appellate tribunal will not interfere if it is satisfied that the lower Court has exercised its discretion in a judicial manner is not good law. In support he cited *Stevens v. Weekes*[1], *Maxwell v. Keun*[2], *Evans v. Bartlam*[3] and *Ossenton & Co. v. Johnson*[4].

In *Maxwell v. Keun*, Atkin L.J. said as follows :—

"The other point that was made by the defendants was that this was a discretionary order, and that the Court of Appeal ought not to interfere with the discretion of the learned Judge. I quite agree that the Court of Appeal ought to be very slow indeed to interfere with the discretion of the learned Judge on such a question as an adjournment of a trial, and it very seldom does so; but on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the Court has power to review such an order, and it is, to my mind, its duty to do so."

The last paragraph of the headnote to *Evans v. Bartlam* reads as follows :—

"While the Court of Appeal will not normally interfere, except on grounds of law with the exercise of the Judge's discretion, if it is seen that on other grounds his discretion would result in injustice being done, the Court of Appeal has both the power and the duty to remedy it."

In his judgment in *Ossenton & Co. v. Johnson*, Viscount Simon L.C. said :—

"The law as to the reversal by a Court of Appeal of an order made by the judge below in the exercise of his discretion is well-established, and any difficulty which arises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If, however, the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."

And in the same appeal Lord Wright said "a reasonable danger of injustice is, in my opinion, enough to justify review".

I agree with Mr. Shearn that if this Court is satisfied that an injustice has resulted from the way in which the learned Judge exercised his discretion in the lower Court it has power to interfere.

For the respondent Mr. Griffith-Jones submitted that the injustice, if any, was created by the Enactment itself and was therefore no ground for revising the decision. He argued that where the applicant has

refused to make a claim under section 9 of the Enactment or has omitted without sufficient reason, to be allowed by the Judge, to do so, it is the Enactment itself, and not the exercise of the Judge's discretion, which causes any injustice, and this cannot be a ground for reversing the decision of the trial Judge. He also submitted that the evidence of the appellant and his witnesses was not "uncontradicted and unchallenged", as there was the statement made by the Collector and addressed to the Court under section 23 which clearly showed the apportionment of the compensation as being :—

Buildings	$ 8,000
Land at $3,000/- per acre ..	6,000
Dock yard (sic)	6,000
	$20,000

Mr. Griffith-Jones also submitted that in the original written offer of compensation the word "land" clearly included the dry dock which was attached and formed part of the land. He admitted that, in the absence of any evidence regarding the type of houses, he could not attempt to explain the separate reference to the houses in that written offer. Mr. Griffith-Jones denied that any injustice had been caused, but if he were wrong in that, he submitted that such injustice was due to the appellant's disregard of a statutory duty and was inherent in the Enactment.

In reply Mr. Shearn stated that the injustice on which he based his case was not merely that the compensation was inadequate but was that no compensation had been awarded in respect of the dry dock and that the attitude of the Collector, a Government official, deterred appellant from urging his rights. He added that officials should be models of fairness but in this case the attitude was overbearing.

Now, when considering these arguments, the first point, and, as I see it, the most important point, to be decided is whether it is correct to say that the appellant's evidence was unchallenged. Section 23 requires a Collector, when making a reference, "to state for the information of the Court in writing under his hand" certain specified facts. That statement becomes part of the record in the Collector's reference to the High Court and in the subsequent appeal to this Court. If the various facts the Collector is required to set out in the statement cannot be regarded as evidence I fail to see any useful purpose the document can serve. In my opinion, as the statement is for the information of the Court, the Court may take judicial notice of the facts therein set out provided such facts are those the section requires the Collector to set out. This being the case, the evidence that no compensation was awarded is at once "challenged" because it is clearly stated that the total amount of compensation awarded *viz.* $20,000 was made up as follows :—

"(d) Ground of determination of compensation

(1)	**Building.** Modern (1946/47) plank house with concrete floor	$ 4,000
	Old wooden building (3 shophouses and 1 line = 4)	4,000
(2)	**Land.** $3,000 per acre .. .. .. This is a comparable valuation to similar land in the vicinity. The area is outside the Town Board limit, with indifferent access and not suitable for shophouses building.	6,000
(3)	**Dockyard.** (sic) $6,000 .. .. .. The dockyard is not and has not been in use for several years and may be described as derelict. Ship repairs are not being carried out on the land. The P.W.D. Estimate to make the dock a going concern is $50,000 (Dollars fifty thousand)."	6,000

It might appear that $6,000 is a very small sum to be awarded as compensation for a dry dock. But in this case the dock is a very small one having a capacity, on appellant's own evidence, to accommodate "boats up to twenty-five tons". It is some twenty years old, and the appellant and his witnesses admitted that it is in urgent need of repairs and also requires a new gate. A number of photographs were put to the appellant and admitted by him to be photographs of the dry dock in question. Those photographs show that the dock is largely over-grown by vegetation and appear to support the Collector's statement that the dock "may fairly be described as derelict". For these reasons I decline to accept as proved the grave imputation that the Collector did not award any compensation for the dry dock in his original award but first did so in his reference to the Court by sub-dividing the award originally made in respect of the land. This finding destroys the whole basis of Mr. Shearn's submission. If the compensation awarded for the land included that in respect of the dock, the appeal is against the adequacy of the award and not against the alleged injustice of making no award in respect of the dock, and subsequent over-bearing conduct of the Collector which deterred appellant from urging his claims.

For these reasons I am satisfied that there was no wrongful exercise of discretion by the learned Judge in the lower Court and consequently there is no reason for this Court to interfere. It follows that, in my opinion, this appeal should be dismissed. As both Mr. Shearn and Mr. Griffith-Jones agreed that neither side would ask for costs in this appeal, I make no order as to costs of this appeal.

In the lower Court the learned Judge ordered that each party do bear his own costs. This part of the order contravenes section 37 (i) (a) of the Enactment. In accordance with that provision the appellant will pay the costs in the lower Court. The $500 deposited in Court will be paid out to respondent against his costs in the lower Court.

Russell, J. : — This is an appeal from the decision of a Judge to whom the Collector of Land Revenue, Lower Perak, hereinafter called the respondent, had referred the matter of the compulsory acquisition of certain land, situated in Mukim Durian Sebatang, Teluk Anson upon the written application of the appellants.

The land in question has an area of about two acres and has thereon five houses and a dry dock.

After certain preliminary negotiations the respondent on the 7th of November, 1949, issued a notice under section 9 of the Land Acquisition Enactment, Cap. 140, stating that the Government intended to take possession of the land and calling upon the appellants as persons interested therein to appear personally or by their agent before the respondent on the 28th day of November, 1949, and there to state the nature of their respective interests in the land and the amount and particulars of their claim to compensation and their objection, if any, to the measurements made under section 8 of the Enactment.

The reasons for a person being required to state the nature of his interest in the land and the amount and particulars of his claim are set out in the head note to the case of *The Secretary of State for India in Council v. Bishan Dat*[5] which reads as follows :—

"It is intended by section 9, clause (2) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and a proper award based upon a proper enquiry after the proper means have been placed before him for holding such an enquiry."

It was admitted on behalf of the appellants that the second appellant who appeared on behalf of himself and his co-appellants before the respondent did not at the Enquiry state the amount and particulars of their claim as demanded by the respondent under section 9 (ii) of the Enactment.

This omission to make a claim under section 9 is important as when the Collector's award is referred to a Judge and Assessors under section 22 the Court has no power after such omission to award an amount exceeding the amount awarded by the Collector unless there is in the opinion of the Judge sufficient reasons for the omission.

At the hearing of the reference it was argued by Mr. Yeoh Cheang Lee on behalf of the appellants that although the second appellant appeared before the respondent he had no opportunity to make a claim but the learned Judge was of the opinion that no sufficient reason for not making a claim had been shown and stated that he was forced to the conclusion that the second appellant considered that it was not in his interest to do so at that stage.

He therefore confirmed the award made by the Collector of $20,000/- and the appellants have now appealed.

At the hearing before this Court, it was argued on behalf of the appellants that the reason for the omission to make a claim under section 9 (ii) was that the respondent told the second appellant at the Enquiry that he would get no compensation at all for the dry dock.

It is therefore necessary to consider whether this in fact did occur and if so at what stage of the Enquiry. The notes made by the Collector at the Enquiry were quite short and are as follows :—

"Lot A 1400/49

Acquisition of land for the New Marine Dockyard, Teluk Anson.

Land to be acquired.

E.M.R. 6334 Lot 212 Durian Sebatang.

Area 2-0-06.

Notice issued and sent.

Respondent **Woo Saik Hong** in person also representing Woo Chee Meng and Leong Hing (f).

Award:

That the total of 2-0-06 be acquired at a valuation of $20,000/- viz:

$12,000/- for the land
8,000/- for the five houses thereon.

$20,000/-

and that compensation be divided between

Woo Saik Hong 3/8
Woo Chee Meng 3/8
Leong Hing 1/4

Objection by Mr. Woo Saik Hong against the compensation awarded.

Sgd. Richard West
28.11.49."

At the reference the second appellant gave evidence as follows :—

"I went before the Collector about 10 a.m. There were only the Collector and myself present. He asked me if I represented the owners of the land. I said I did. He told me the Government wanted to acquire the land. I was offered $8,000/- for the houses on the land and $12,000/- for the land. I said I was satisfied but asked that I should be paid for the dock. The Collector said I could not get compensation for the dock. I said I would appeal if I was not compensated for the dock. I was not asked any other questions."

and in cross-examination the second appellant stated

"I have never claimed a specific amount for compensation. I have never submitted particulars of my claim.

At the Enquiry the Collector did not make it clear to me that the $12,000/- for the land included the dry dock. The Enquiry was on 28th November, 1949."

From these extracts it would appear that the appellant was quite satisfied with the award of the sum of $8,000/- for the houses on the land and with the sum of $12,000/- for the land alone but that he desired a further sum the amount of which he did not fix for the dock. It would also appear that he made no objection whatsoever until the respondent had determined the total amount of compensation and had communicated the amount to him. He then objected to the amount.

It is quite true as was pointed out by Counsel for the appellants that until the respondent issued his statement under section 23 of the Enactment on the 14th of April, 1950, he made no specific reference to any particular sum being payable for the dock. This statement which was properly before this Court disposes of the argument put forward on behalf of the appellants that the evidence that the appellants were awarded nothing for the dock was unchallenged and the respondent's written offer of the compensation, awarded by him and made on the same day as the Enquiry, makes it quite clear that the sum of $20,000/- was made in full compensation for the land which would legally include the dock.

I cannot regard an objection made to an amount of compensation, already decided upon by a Collector and communicated to the interested party as being the amount of his award, any sufficient reason for an omission to furnish details of a claim under section 9(ii) when it must be borne in mind that these details in accordance with the decision quoted above are required for the very purpose of enabling a Collector to make a fair and reasonable award.

Indeed the reason given in this Court on behalf of the appellants for not making a claim only came into existence after the proper time for making such a claim had already expired.

I have therefore come to the conclusion that the learned Judge was right in refusing to exercise his discretion in favour of the appellants. I would dismiss this appeal. There should be no order for costs of this appeal as the parties hereto have so agreed. At the reference before the learned Judge each party was ordered to pay its own costs but as the amount awarded did not exceed the sum awarded by the Collector the only order as to costs that could properly have been made under section 37(i)(a) of the Ordinance was for the costs of the reference to be paid by the appellants. I would therefore amend the order of the learned Judge accordingly.

Hill, J. : — I have had the opportunity of reading the judgments of the Chief Justice and of my brother Russell. I am, with respect, in agreement with these judgments and have nothing to add thereto.

Appeal dismissed.

HAMEEDA BEE v. MRS. P. SEENIVASAGAM.

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and Russell, JJ.) September 13, 1950]

[F.M. — Civil Appeal No. 13 of 1950]

Trust — Declaration of trust — Evidence.

In this case the plaintiff-appellant sought a declaration that the defendant-respondent held 14/64 interest in the estate of M. Shaik Adam (deceased) in trust for the plaintiff-appellant. At the trial the learned trial Judge in his judgment said: "I consider it most likely that the defendant's husband did intend when he purchased the share in the estate to do something for the plaintiff and her children, even perhaps as understood by Mr. Peace, to the extent of ultimately handing it back to the plaintiff." The learned Judge however held that no trust had been created and gave judgment for the defendant. The plaintiff appealed.

Held, (1) that clear and unequivocal language must be used to establish a trust; (2) that in this case there was insufficient evidence to displace the natural inference to be drawn from the fact that the respondent's late husband bought the land and had it transferred to himself and therefore the appellant had not discharged the burden placed upon her to prove the trust.

Case referred to:—

(1) *Po Kin and anor. v. Po Shein* A.I.R. (1926) P.C. 77.

CIVIL APPEAL.

M. S. Mahendran for the appellant.

H. T. Ong for the respondent.

Pretheroe, Ag. C.J. : — In this case the plaintiff sought a declaration that the defendant held 14/64 interest in the estate of M. Shaik Adam (deceased) in trust for the plaintiff. After hearing the arguments the Court dismissed the appeal and stated that its reasons would be given later. Three witnesses gave evidence to the effect that defendant's late husband